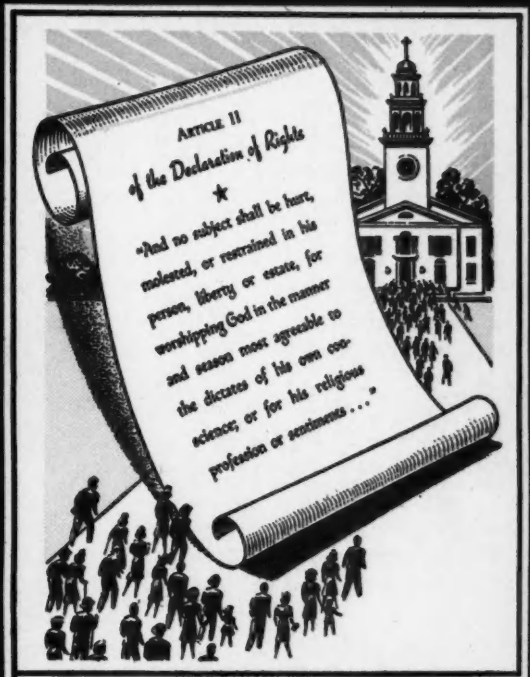
CASE AND COMMENT



One Rampart We Watch

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Case and Comment

THE LAWYERS' MAGAZINE

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CONTENTS

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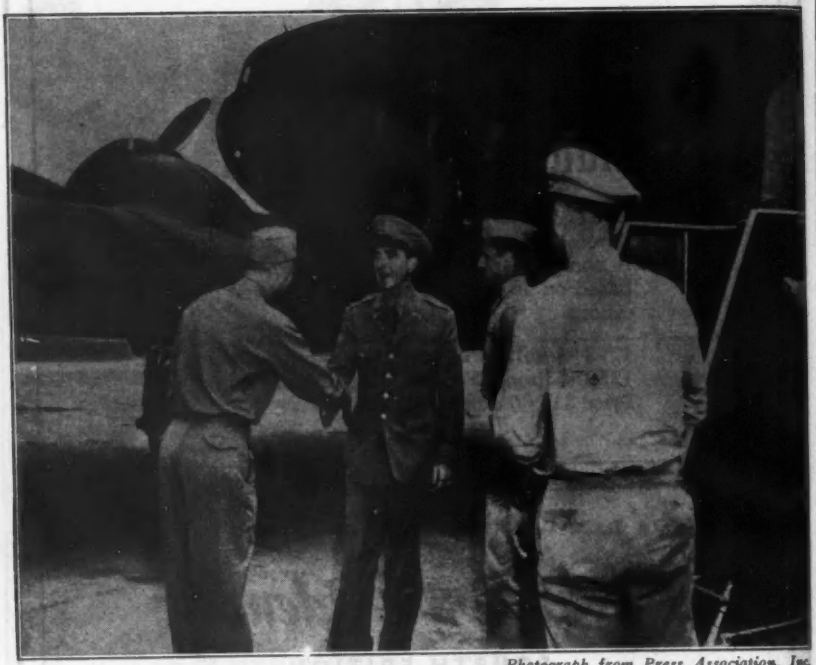


Photograph from Press Association, Inc.

JUSTICE MURPHY REPORTS FOR DUTY

Associate Justice Frank Murphy, on leave from the United States Supreme Court, at Fort Benning, Georgia, where he is to take up his duties as a Lieutenant Colonel.

A FLASH TO THE SETTING SUN

By ROBERT A. MORTON[1]
of the Los Angeles Bar

To Hirohito, Sublime Majesty, Son of Heaven, One Hundred Twenty-Fourth Emperor of Japan:

We, who were the friends of the Japanese people, greet you in sorrow.

Many years ago, Hirohito, a Bronze Bell was made in Japan and hung in our Naval Academy at Annapolis. It was a gift from the Mikado to our Commodore Perry—a gift in recognition of the services of Perry in bringing to Japan the culture of the West.

In that Academy at Annapolis many of your sons have freely resided as students of naval science and strategy. Since the fateful day that Perry sailed into the harbor of Yokohama, many thousands of your people have sat at the feet of leaders in education of the schools and colleges of America, as friends and guests of the American people. The output of our inventive genius and our physical resources has been open to you, for we believed we saw in the Japanese eagerness for knowledge, qualities of character that entitled your subjects to share in the advancement of a civilized world.

Today, Hirohito, for our sad misunderstanding of the true spirit of the rulers of Japan, we are paying with the lives of American boys. The bombs you let fall at Pearl Harbor have silenced the Bronze Bell at Annapolis—*yet shall it ring once again!*

Hirohito, God of the once Rising Sun, destiny placed your people on a rocky island in the Far Pacific, where struggle against famine and earthquake was made bearable by a creed of ancestor worship, and a philosophy of exaltation of personal bravery and self-sacrifice. We brought to you the means of happier, easier living. We unlocked to you the treasure box of the West with all of its contents—moral, spiritual and material. At time of dire need, our Red Cross went overseas to the aid of your stricken people.

Yet did you, Hirohito, and the chieftains over whom you preside, adhere to the Shinto "Way of the Gods." Carefully you perpetuated the belief that your people are the Superior Race, destined to rule over all men, yellow and white; carefully you nurtured a religion of nature-myths and emperor-worship devised by your predecessors to make strong the imperial dynasty that governs with an iron hand the sixty-million slave inhabitants of your island.

You, Hirohito, were educated, too, in the ways of the white man. Teachers from America were welcome in your sacred precincts. You traveled in Europe. Yet you remained a true descendant of the Goddess of the Fiery Sun. You and your intimates accepted in full the friendship of the West, ever courteous, ever smiling—ever watching and waiting for the day when Japan should strike.

Can it be said, Hirohito, that *you* were powerless to avert the tragedy? Are you not the Son of Heaven, ruler of the mind and soul of your people? Do not your prerogatives exceed the powers of any white monarch? Are you not the Supreme Commander of army and navy? May you not convoke or dismiss the Parliament, initiate or veto emergency legislation, and suspend, if need be, the entire Constitution of Japan? Are you not the sacred heir of Amaterasu, Daughter of the Sun?

Hirohito, badly have you and your advisors misjudged the effect and val-

ue of surprise attack that partly succeeds. You have underestimated the resources and valor of Americans forced to fight for existence in a world almost struck down by barbarism. You have wrongly regarded as weakness the reluctance of our people to suspect and guard against treachery; you have overlooked our united determination that our civilized way of life shall not be taken from us by gangster nations from any quarter of the globe. Those first military gains of your yellow hordes shall avail you nothing in the end. Japan, as an Empire, shall be *eclipsed!*

In all groups of men, Hirohito, some strive for power to guide the destiny of their fellows. When that ambition for power is tempered by wisdom and clear vision, a group will be free of fear and tyrants. But when those who lead have not yet emerged from the atmosphere of the jungle, are blind, greedy and cruel, ambition may reach backward across the borderline of balanced sanity into the realm of savage instinct, and such peoples and their neighbors may suffer the tortures of Torquemada. For those leaders, despite a pretense of patriotism, have no love of country—have only the savage urge to rob, destroy and kill.

Hirohito, you and your advisors came under the spell of the propagandists of Hitlerism. You were made to believe that Germany would conquer the white world; that the time had come for Japan to join in the assault and divide the spoils with that "Invincible German Knight in Shining Armor." Did you not guess that he would swallow you in turn? You dreamed that the hour for Japan had struck, and so it had, Imperial Majesty. On the Seventh Day of December, in the year Nineteen Hundred Forty-One of the Christian Era, the Rising Sun of Japan *ceased* its upward course. The hour had struck for its decline in the East and in the West. We sent to you Commodore Perry; you sent to us the grinning Kurusu.

You and your people, Hirohito, shall never forget that visit to America of your special Envoy, armed with cordial smiles and the regalia of pretended friendship—to win time for the attack. At the moment of his departure from your August Presence, your war lords were putting out to sea with the advance units of the greatest Armada of all history, a military and naval force that would strike when the pre-arranged signal was given, would strike treacherously at the long-time friend and counsellor of the Japanese people. December the Seventh, 1941! That day shall become a day of mourning in the traditions of your race.

In those tragic weeks, Hirohito, did not the ancestors whom you worship speak to you across the void? Or did you refuse to listen to the promptings of education and conscience? For if you had, and all else failed, yet was there a Japanese way open to you, a way taken by many of your people from time immemorial—that honorable face-saving stroke of the short sword of Japan!

Hirohito, Emperor of the once Rising Sun, that Sun is on the wane. We who raised your nation from primitive isolation have accepted your cancellation at Pearl Harbor of the bond of friendship between your people and ours.

Once again shall the Bronze Bell of Annapolis ring out! On that day the forces of the civilized world shall extinguish the bloody glare of the Setting Sun of Japan. On that day shall it toll the demise of a world power. At any cost that day shall come to pass.

Hirohito, God of the once Rising Sun, as America arms for Victory, the heads of your sacred ancestors—ARE THEY NOT BOWED IN SHAME?

SO YOU THINK YOU KNOW THE LAW

By ABRAHAM BRODY[1]

THERE is a legal maxim that every man is presumed to know the law. Ignorance is no excuse. Law, it is said, is nothing but common sense and since everybody presumably has common sense everybody knows or should know the law.

If you are endowed by Your Creator with an inalienable share of this precious sense, try it on some of these cases. They are not imaginary or hypothetic situations but real cases which have actually come up before the courts.

Your maid is preparing a mess of clams for the household. She eats her meals at your home and shares the clams with the other members of the house. In opening one of the crustaceans she finds a pearl which in the language of Othello is "richer than all her tribe." But unlike the base Indian she does not cast it away. The clams were purchased with your good money. Query: Who is entitled to the pearl, you or your maid?

H, a hunter, sets a bear trap on public land, hoping to snare an unwary Bruin. S, a stranger, stumbles upon the trap, takes it elsewhere where he sets it up anew. B, the bear, is caught. Whom does the bear belong to—H or S?

If common sense were a key to the solution of these questions, reasonable men could easily agree and no litigation would have been necessary. Yet, in each instance lawsuits were brought, lawyers wrangled and judges deliberated and pondered and not always decided rightly. The case involving the pearl found in a clam was tried in a New Jersey court but never reported and the disposition remains unknown. The fellow who stole the bear trap is of course guilty of larceny of the trap but the bear is his.

It is obvious that there is no such thing as common sense in the abstract—that one man's common sense is not the common sense of another and that lawyers and jurists may sensibly disagree. Dissents among members of the same bench and between upper and lower courts are in fact so frequent that one can never know what the final outcome will be—a fact recognized by the courts themselves which have held that a wager on the decision of the highest court is a gambling contract and illegal.

Even when the highest court has spoken, it does not mean that the question involved is laid to rest once and for all. The decision may be final as far as the litigants are concerned. It does not settle the philosophic or logical principle in the abstract.

For example, the Lido corporation sold one Vogel a quantity of intoxicating beverages during Prohibition. Vogel refused to pay the purchase price. The contract of sale being illegal and in violation of the 18th Amendment and the Volstead Act was unenforceable. The Lido corporation, however, waited until the repeal of the 18th Amendment and sued. Should the Lido corporation recover?

The Municipal Court of the City of New York in 1936 held that Lido corporation may recover. The effect of the repeal was to nullify the 18th Amendment and the Volstead Act, ab initio.

"The rights of the parties to the action," said the court, "must be determined as if the parties had contracted in the absence of any Prohibi-

[1] Member of the New York Bar.

tion Amendment and laws and statutes in connection therewith, since at the time of the commencement of this action the Prohibition Amendment was merely a repealed law with the same effect as if such law had never existed."

Four years later the City Court of New York in a case involving the same principle arrived at the opposite conclusion.

"An act," said the court, "which, when done, was made unlawful—criminal by statute does not have its taint removed by the subsequent repeal of the statute."

You may argue pro and con on this question from the logical standpoint ad infinitum. Thus far the highest court has not yet spoken and when it has you may still argue either way and be right.

Or take this one. The Alcoholic Beverage Control Law provides that "no retail license to sell liquor and/or wine for off-premises consumption shall be granted in cities having a population of one million or more for any premises which shall be located within 1500 feet of any premises holding a similar license *on the same street or avenue.*" One Oberson had a license for a liquor store for premises at 398 Fourth Avenue, New York City. The State Liquor Authority having subsequently issued another license to Seyopp Corporation to conduct a similar business at number 2 Park Avenue, Oberson brought an action for an injunction to restrain Seyopp Corporation from doing business and for revocation of the corporation's license on the ground that the license was issued in violation of the statute quoted. Park Avenue is the continuation of Fourth Avenue and the distance between 2 Park Avenue and 398 Fourth Avenue is less than 1500 feet. Query: Is Park and Fourth the same street or avenue within the meaning of the section?

The lower court held that Park and Fourth Avenues are one and the same, as any cab driver will tell you as he takes you to the Grand Central. The same street by any other name is still the same street. Geographically at least the decision was right.

No, said the higher court. The statute must be strictly construed. It would work hardship on the Seyopp Corporation which had invested large sums in the store to be put out of business. Park Avenue is not the alter ego of Fourth. Nomenclature does make a difference.

It is because common sense is so uncommon—as Oscar Wilde has said—or because common sense is so vague and indefinable a thing that it is so difficult to know what the law is. One can't ascertain it by resort to experiment in the laboratory. Laws of physics and chemistry have no common sense about them and therefore one can't dispute or argue about them. They simply are, courts and judges notwithstanding. Law being a matter of common sense every one having common sense or who thinks he has common sense is entitled to an opinion.

There is the story of the conscientious jurist who was holding court in chambers in the presence of his wife. After listening to the plaintiff's story, he nodded sympathetically and remarked: "You are quite right." Then the defendant told his story—and told it so convincingly that the judge couldn't help but agree. "Quite right," he mumbled.

"But, John," pleaded the logical-minded wife, "how can both the plaintiff and the defendant be right?"

"You are right too," agreed the husband.

The truth of the matter is that to know the law requires more than common sense. It requires a knowledge of the world and men and a wisdom born of long experience. The wise

and upright judge must know more than law—he must know the arts and sciences, history and philosophy and religion—in fact every branch of human knowledge, for law is co-extensive with life and touches every phase of human experience. To vary a phrase of Kipling's: Who knows law who knows law only? The ideal judge must not only be a lawyer, he must be a doctor, engineer, musician, art and literary critic, all rolled in one.

When cast in the form of litigation, judges are called upon to answer questions properly belonging in the domain of religion and philosophy. Take the case of Mr. Smith, president of the American Association for the Advancement of Atheism.

Mr. Smith was haranguing an audience in Columbus Circle on the subject of atheism when he was interrupted by a policeman who gave him a summons for violation of a Municipal ordinance which makes it an offense to conduct religious meetings in public by one not a duly ordained minister having a permit for that purpose.

"But I'm not conducting a religious meeting," protested Mr. Smith.

"Tell it to the judge," said the officer.

The Magistrate agreed with the policeman—that atheism and religion are one and the same thing and found Mr. Smith guilty. Mr. Smith appealed to the Court of Special Sessions which affirmed, one Justice dissenting, in effect agreeing with the Magistrate and the policeman. Undaunted, Mr. Smith appealed to the Court of Appeals, the highest court in New York, which staunchly vindicated Mr. Smith.

"Worship," said the court, "has a well-known and well-defined meaning in common use among the people of this community." ("Public worship" were the exact words used in the ordinance). "It means any form of religious service showing reverence for the Divine Being. Many are the ways of approach and varied are the methods of showing this reverence. . . . All this the defendant ridiculed and denounced as being a superstition. According to him and his society, there is no Divine Being. Instead of gathering an assembly for public worship he was doing just the reverse; he was denouncing worship in any form and calling upon his hearers to desert such practice."

The result of the decision was to give Mr. Smith carte blanche to carry on his atheistic propaganda in public. New York City, however, won the last round, if the sequel is to be told.

The ordinance was amended to include atheism as well as religion. Mr. Smith ignored the amendment. He was again summoned to court and convicted. He appealed once more on constitutional grounds of free speech and lost. He carried the case to the Court of Appeals. This time the highest court overruled Mr. Smith and affirmed. Thus cornered, Mr. Smith kept his peace forever after.

If atheism is not religion, is metaphysics religion? The idea would not occur to the ordinary mind but a lawyer conceived it. He was the attorney for a Society devoted to the study of metaphysics which owned a 50-acre estate in Suffolk County and a 110-room mansion formerly belonging to William K. Vanderbilt. The full name of the Society was Peace Haven, The House of the New Commandment, Royal Fraternity of Master Metaphysicians Retreat, Inc. The property of the Society labored under a heavy tax burden and the Society sought to obtain an exemption on the ground that it was a religious organization. To join the society a member was required to make a "love gift" of $100.00 and pay $2.00 month-

ly dues. Its quarters were luxurious and equipped with athletic and recreational facilities, with motor boats, riding horses, tennis courts, etc. Among its various interests was the custody of a baby named Jean Gaunt which the organization proposed to adopt and rear for immortality to prove that "it is possible to be immortal if you have enough effort to be it."

The court, after consulting Funk & Wagnals, found that metaphysics was defined as the "systematic study of the first principles of being and knowledge;" or "the reasoned doctrine of the essential nature and fundamental relation of what is real;" or "the speculative philosophy in the looser and wider sense." Judicially the courts have defined metaphysics as the science of being; the science which deals with ultimate reality; the philosophy of mind; the science beyond experience."

The court found that the society had no "tenets, ritual, dogma or other characteristics of a religion except possibly the solicitation of funds."

In other respects the court became suspicious of the organization's activities and held, firstly, that it was not a religious institution and, secondly, directed that the society be investigated by the office of the district attorney.

A recent case involved the problem of education. The Surrogate before whom the case appeared was called upon to decide what constitutes a "proper education." He met the challenge like a scholar and delivered a learned treatise worthy of a more professional pedagogue.

The late W. Beran Wolfe, author, lecturer, psychologist, in his will provided, among other things, for the creation of a trust for "the proper education" of his brother Daniel B. Wolf. The executor brought a proceeding to construe the will. What is a proper education? How long must the education continue? Does it end with graduation from a university or college? How long must one go to school before he can be said to be "properly educated?" Delving into the classics and bristling with quotations, the jurist came to the curious conclusion that education never ends.

"As long as one lives," said the Surrogate, quoting Seneca, "one must learn how to live. One must keep learning as long as one is ignorant, even to the end of life."

Referring to the beneficiary of the trust, the Surrogate continued: "Perhaps this brother of the deceased has the spark of genius. If so, his education will never end in this life. As he learns, deeper and wider his insight will extend, but his curiosity (the mark of a student) will never find complete satisfaction. He will serve to illustrate a paradox: the most completely educated of men are also the least completely educated. Such men outgrow their early teachers but they continue the educational process by turning to the instructions afforded by the union of fact and imagination and ever show an inexhaustible docility in face of this greatest of all teaching combinations. It is only the clod who may speak of his education in the past tense. By so doing he confesses that he has surrendered his claim to curiosity (if indeed he ever had any) and is ready to settle with life if only it will make him fat, numb and secure."

The court held, therefore, that it was the intention of the testator that the fund set apart for his brother's education be available to him even to its exhaustion for his entire life.

A judge (and a lawyer) must have a smattering of the arts and sciences, literature and music. Patents, for example, require a knowledge of engineering more than law. In the handling of accident cases familiarity with the human anatomy and medicine is

indispensable. In incompetency proceedings, lawyers must know something about psychiatry and abnormal psychology. Occasionally the law touches on botany and zoology and even ventures so far as to disagree with scientists.

Back in 1893 the august Supreme Court of the United States had to decide whether a tomato is a fruit or vegetable. The question involved a shipment of a cargo of tomatoes from the West Indies to New York. Under the customs regulations at that time, fruits were exempt from import duties while the tax on vegetables was 10% of their value. The collector of the Port of New York contended that tomatoes were vegetables; the shipper maintained they were fruits.

Lexicographically and botanically, fruits are defined as that part of a plant which contains the seeds and tomatoes properly should be classified as fruits. "But," said the court, "in the language of the people whether sellers or consumers of provisions, all these are vegetables which are grown in kitchen gardens and which, whether eaten cooked or raw, are, like potatoes, carrots, parsnips, turnips, beets, cauliflowers, cabbage, celery and lettuce, usually served at dinner in, with, or after the soup, fish or meats which constitute the principal part of the repast and not like fruits generally as dessert."

In 1921, the U. S. Customs Court was confronted with a similar question involving the whale. Is the whale a fish or mammal? There was a difference in the customs duties depending on whether a whale was the one or the other. Now every student of biology knows that a whale is a species of mammal. Yet for the purposes of import duties the court held it to be a fish.

"People and legislators have classified whale as a fish and popular acceptance must prevail against scientific signification. We hold, therefore, that a whale is a fish and its flesh is fish."

Even questions of punctuation and grammar are not beneath the dignity of the court to pass upon. Not so long ago Justice Ferdinand Pecora was called upon to say whether the sentence "May I help you with your problem of reorganization of the personnel," should be punctuated with a period or question mark.

The Civil Service Commission of New York City held a promotion examination for the position of clerk, grade 2, and the foregoing was one of the questions asked. Seventeen of the applicants who took the examination answered that the sentence should be punctuated with a question mark and were marked wrong. They took their grievance to court.

In arriving at a determination of the question the judge was aided by 46 letters from publishers of dictionaries, newspapers and magazines and the heads of universities and colleges. The decisive factor is whether the question calls for a "yes" or "no" answer or is merely rhetorical; whether it embodies a request and is interrogative in form only as a matter of courtesy. All the authorities consulted gave their opinion that the sentence should properly end with a question mark and the court therefore directed the Civil Service Commission to re-rate the 17 papers marked wrong on the question.

It is plain, therefore, that to know the law requires more than common sense—if there is such a thing at all. It requires a comprehensive knowledge of the accumulated wisdom of the ages, a knowledge of the world and men and, in addition, the gift of prophecy which will enable one to predict what a divided court of five judges will think as against four.

While in legal theory every man is presumed to know the law, in reality —who knows the law?

THE LAWYER'S PART IN WORLD WAR II

By GEORGE R. BUNDICK[1]

THIS does not purport to be a story of those gallant sons of the legal profession in the armed forces of the country. Their number, in the thousands, is sufficiently large to make a grateful profession proud as they tread the path of duty with a devotion to ideals given to few in the whole broad sweep of history.

This is a chronicle of the hundred and sixty odd thousand members of a profession whose training and daily tasks and strategic position in every city, town, village, and hamlet, qualify them to deal with that most powerful force, public opinion.

The lawyer sits at his desk today looking out over a war-torn world. Disillusioned, tired, wondering if the rules of law and order and fair dealing by which he leads his life and counsels thousands of others to live are to be wiped out by the retrogressive revolution of these times.

Let him not in "mournful numbers" long so reflect. He is a man of thought and action. He advises men in all stations of life. He keeps his fingers on the pulse of all community activities. While he applauds men at their best he also knows them at their worst.

The lawyer can render his greatest patriotic service as the community's outstanding student of affairs, teacher and adviser of men. At his club, on the street, in his office, he hears fifth columnist inspired half-truths, repeated by the docile tongues of so many thoughtless citizens. Let him stamp these out with the same vigor with which he presents his client's case.

Public lassitude concerning this war is the greatest enemy this country faces. The lawyers must take every opportunity to stir the minds and imaginations of the public into a realization that every effort must be spent in hastening the victory that is to be.

Let him preach once more, as he has done in other trying times, the immortal truisms upon which democracy rests: "Individual liberty and the common good are not incompatible, but are entirely consistent with one another;" "The rights of every citizen end where the rights of every other citizen begin;" "A government of laws and not of men;" "A government of the people, by the people, for the people." These truisms are not mere glittering generalities to lawyers. They are the materials with which have been built the worthwhile institutions of our times.

Membership on various draft boards, Bar Association committees on national defense, speakers bureaus, advice to selectees, generous handling of the legal matters of brother attorneys called to the colors, all these have their place in a lawyer's contribution to national defense. But over and above these details the task of upholding the spiritual and moral values which make the nation invincible belongs to the lawyer because of his special training and adaptability for the job.

Sabotage breeds well where thoughtless grumbling exists. Political hatred can have no place in determining the will of the community to do its full part in national defense. A gentle urge in that direction, a kindly pat when discouragement appears, these little things in life when added up can tip the balance from inefficiency to efficient national economy.

[1] Editor-in-Chief, Case and Comment.

SIR GEORGE JESSEL

By HARRY COHEN [1]

(From the Bronx County Bar Law Magazine, January, 1942, issue)

An English wit of the 18th century observed that "Law and Equity are two things that God hath joined together, but which man has put asunder." The gibe was not without justification, for a dual system of administering justice was a costly and irrational anomaly, however sanctified by tradition. Learning and creative imagination of a high order were needed to fuse the two systems into a workable unity. Fortunately these qualities were not lacking in the man who, perhaps more than any other, was the architect of the new structure which still serves the British people, Sir George Jessel, Master of the Rolls.

When Parliament passed the Judicature Act in 1873, it provided for the creation of a Supreme Court which should encompass legal and equitable matters in the same forum. In the very same year, Jessel succeeded Lord Romilly as Master of the Rolls, a judicial post second only to the lord chancellor and one which enabled him to sit both as a judge of the first instance and also as a member of the Court of Appeal. To him fell the task of instituting the new system and in recognition of his talents, he was designated chairman of the committee of judges which labored for two years in drafting the rules which were to make a functioning reality of the Judicature Act.

Even had he not filled this historic role, Jessel's qualities as a judge would have made him a noteworthy figure, for he brought to the bench a capacity for expeditious disposition of legal business theretofore unknown to the Courts of Chancery. He showed that despatch need not be achieved at the cost of erudition or thoroughness. His opinions, many of them landmarks in varied fields of equity jurisprudence, were invariably delivered orally without reserving decision. Yet all of them are marked by vast learning and an incisive delineation of the issues.

He was well suited to the role of rescuing the Chancery from the reproaches of Dickens' *Bleak House*. To him, the law's delay was a positive evil, to be wrestled with unceasingly. Eldon, he called "the dubitative chancellor," in token of his chronic indecision, often resulting in protracted delays to litigants.

He had been not less sure-footed as a lawyer. Parliament once called upon him while solicitor-general for a legal opinion concerning the important Alabama Claims controversy with the United States. He advanced a bold and original view. Lord Coleridge asked him, "Are you sure?" Jessel's reply was so characteristic, it tagged him for life. "I may be wrong," he said, "and often am, but I never doubt!"

Yet it was undue modesty to say that he was often wrong. Actually, his reputation was so high that when a vacancy occurred in the Court of Appeal it was deemed unthinkable to appoint any other to review Jessel's decisions. So in 1881 the Master of the Rolls was relieved of original jurisdiction to enable him to fill the vacancy as the president-justice of that high court.

His only fault stemmed from his impatience with delay which sometimes led to a certain brusqueness in dealing with counsel. But even here, the instincts of a gentleman prevented

[1] Member of the New York City Bar.

him from being unkind to those who were in obvious need of help and assistance, which he readily proffered. Mr. Augustine Birrell, whose reputation as an essayist was as great as his eminence at the bar, in writing of Ben Jonson drew a parallel to "the late Sir George Jessel whose civility to a barrister was always in inverse ratio to the barrister's practice, and whose friendly zeal in helping young, nervous practitioners over the stiles of legal difficulty was only excelled by the fiery enthusiasm with which he thrust back the Attorney and Solicitor General and people of that sort."

It must have been one of "that sort" who, known for his boresome verbosity, discovered to his discomfiture that Jessel was the possessor of a barbed wit. The lawyer was relating to the Court of Appeal what transpired upon the trial in the Court below and after quoting from a portion of the testimony, counsel said:

"At this point, the Trial Court stopped me."

"A moment, sir," said Jessel. "It would be of great benefit to me and their Lordships if you would explain how this was done."

The shafts of his wit could be turned inward, too. Thus there was the occasion when an address to their Sovereign was being drafted by one of his colleagues on behalf of the Court of Appeal and the opening sentence, as read in conference among his associates began, "Conscious, as we are, of our shortcomings, —" Jessel smilingly intervened. "That," he said, "should read 'Conscious, as we are, of the shortcomings of each other.'"

The full measure of Jessel's accomplishment will not be appreciated unless it is understood that, being of the Jewish faith, religious disabilities of his time technically barred his entering the profession, much less ascending the bench. They were waived, however. Surely, the rich gift of his advocacy and judicial wisdom has amply repaid the British people in the lavish contribution made to the science of jurisprudence by this eminent Master of the Rolls.

CORRECTION

MR. HAROLD REITMAN, *of the New York Bar, in the May-June issue of Case and Comment, in his article, "The 'How Lawyer' versus The 'Why Lawyer'", made the statement that Hastings College of Law, where the immortal Pomeroy wrote his preface to "Equity Jurisprudence," is no more.*

As a matter of fact, the Hastings College of the Law, Affiliated College of the University of California, California Building, 515 Van Ness Avenue, San Francisco, California, is very much alive and is making splendid progress under Dean David E. Snodgrass.

We regret exceedingly Mr. Reitman's assumption of its non-existence.

NO. AN OLD, OLD SCORE

Taken from the Kentucky State Bar Journal.

BEFORE THE HON. JUDGES OF THE SUPREME COURT OF HUMANITY APPELLATE DIVISION

EDGAR SIMON, ---------- *Plaintiff*

vs.

NOTICE!

ADOLPH HITLER, ----------
BENITO MUSSOLINI, ----------
Tojo, Premier of Japan, Et al. } *Defendants*

COMES the plaintiff, Edgar Simon, by counsel, and in person and hereby serves notice on the defendants, each and every one of them, that on the date below subscribed, the plaintiff has enlisted in the United States Army Air Corps; that plaintiff as of said date, departs from civilian life until such time as the honorable judges of this Court order and adjudge that the plaintiff's cause of action is just and the defendant's unjust; and until such time as the Honorable Court finds the defendants, each and every one of them guilty of all the acts of which the plaintiff accuses them; and causes proper punishment to be administered unto said defendants.

Plaintiff further serves notice on each recipient hereof that greetings and good wishes are extended to all who join the sentiments herein expressed.

Further, plaintiff sayeth not.

Subscribed and witnessed this 31st day of January, 1942, at Louisville, Jefferson County, Kentucky.

EDGAR SIMON,
Plaintiff and Attorney.

IN FUTURA

By Jacob Boonin of the Philadelphia Bar. From *The Shingle*, of the Philadelphia Bar Association. Reprinted in Dicta, March 1942 issue.

GOVERNMENT
INSTALLMENT AND BAILMENT
LEASE SECTION

Washington, D. C., October 17,1942.

Private Hans Schmidt,
$1416 Swastika Strasse,
Berlin, Germany.

File #2,436,128
Six (6) Machine gun projectiles
Great Britain Account #AZ41,642

Dear Private Schmidt:

YOUR reply to ours of September 11th indicates that you do not yet fully appreciate our legal rights in the matter. The fact (as you point out) that you had the six (6) bullets removed from your side and shoulder does not give you title to the same. Repeating again, we point out that the aforesaid chattels were leased to the British army and not sold. No title, therefore, passed to them, and consequently their receipt by you during the battle of Prussia gave you no higher rights than those had by your transferor.

Our property is clearly marked "leased, never sold—property of I. & B. L. S." See the case of *Install. Div. v. Heinkelbaum's Administrator,* 99 P. T. C. p. 62½, where the questions raised by you were resolved in our favor. In that case where the leased articles were lodged in defendant's decedent's stomach, recovery was allowed against the undertaker, who obtained them from the surgeon.

Your claim to any lien on the chattels because of surgical bills incurred in connection with their removal is equally without merit. This is so notwithstanding that we would have had to wait longer for them in the absence of an operation. In *Install. Div. v. Pugliese,* 117 R. S. V. P. 911, where the exact point was involved, it was held that there was no lien. Also note, that there the suregon was paid, whereas you still have several payments to make.

We feel that there has been sufficient correspondence back and forth in the matter. Unless the chattels are returned in fifteen (15) days from date, replevin will be instituted without further notice. If so, costs will be added and charged to you.

The British Intelligence advises us that you have been reassigned to active duty. In order that there may be no repetition of the delay involved in this transaction, please remember that all articles received by you from any Greek or British source are on lease and must be returned to us.

Very truly yours,

INSTALLMENT AND BAILMENT LEASE SECTION.

P. S. We almost forgot to remind you to also remit twenty-six (26) reichmarks, the cost necessary to reload the spent bullets involved in your case. They were to be returned, reasonable wear and tear only, excepted. Their deterioration occurred when you obtained custody. This clearly makes you liable for reconditioning costs. (See: *In re Matiko,* 189 A. W. O. L. 21.)

I. & B. L. S.

THE BALLAD OF THE CONVEYANCER

Extracts from an article on "Land Titles And Abstract Examination," by Margaret McGurnaghan, from the Kansas Judicial Council Bulletin, April, 1942.

A FEW years ago, I ran across a poem, written about three hundred years ago, and found in the manor court office in Wakefield, England. It was written in regard to titles of that day, but I believe it contains some pertinent advice which may well be applied to titles of today. It reads as follows:

"First see the land which thou intend'st to buy
Within the seller's title clearly lye.
And that no woman to it doth lay claim
By dowry, joynture, or some other name
Which may incumber. Know if bond or fee
The tenure stand, and that from each feofee
It be released; that the seller be soe old
That he may lawful sell, thou lawful hold
Have special care that it not mortgag'd lye
Nor be entailed upon posterity.
Then if it stand in statute bond or no
Be well advised what quitt rent out must goe,
What customs service hath been done of old
By those who formerly the same did hold.
And if a wedded woman put to sale
Deal not with her unless she bring her male.
For she doth under covert barren goe,
Although sometimes some trafficue soe (we know).
Thy bargain made and all this done,
Have special care to make thy charter run
To thee, thy heirs, executors, assigns,
For that beyond thy life securely binds.
These things foreknown and done, you may prevent
Those things rash buyers many times repent;
And yet when you have done all you can
If you'd be sure, deal with an honest man."

REDRESS FROM A FRIEND

THE case of Yaswen v. Pollock, 155 Misc. 475, 280 N.Y.S. 512, presents an interesting study of the temporary character of some friendships. The parties were prominent members of the medical profession, and their acquaintance of some fourteen years, dates back to the days when they were classmates in college and medical school. They were associated in business and were intimate friends. The defendant in the language of Wall Street "got a hot tip" on a corporation which had a patent on a gasoline vaporizer which was intended to dispense with carburetors in automobiles. He passed this tip on to the plaintiff and they discussed the possibilities in the invention, the plaintiff deciding to buy some stock. Came the Wall Street crash of 1929 and the corporation became insolvent. The suit was for fraudulent representations and agreement to indemnify. This set of facts inspired Justice Pette of the Municipal Court of the City of New York to make the following fine observations on friendship:

> "While the concern was struggling to advance its product, plaintiff did not complain. It does not savor well, after the general market deflation caused the best of stocks to tumble, and engulfed this embryonic corporation in the process, for this friend to seek redress from a friend who has been placed in the position of defendant by his naked desire to see a friend make what he had been led to believe was a good investment. If this action were to be successful, no person would ever dare make any suggestion or give any opinion upon any given proposition, because it would be dangerous for him to do so. Much less is this suit appropriate five and a half years after the purchase, four years after the insolvency, and two years after the defendant made his last payment which brought the total to $300.
>
> "Regardless of defendant's conception of friendship, yet shall the qualities of friendship forever temper the conduct of mankind, for that is one of the most valuable attributes of life itself. Had the stock gone skyrocketing, the courts would never have heard of these gentlemen whose scientific training holds them in contact, de diem in diem, with the mysteries of life. Virtue kindles strength, and many virtues there are, equally possessed by the human brotherhood, among which is the one, virtus in arduis—courage in difficulties—only too often ignored in the struggle for the omnipotent l'argent. Virtuous and noble, indeed, is he who can be steadfast and not ready to impugn a well-meant deed ex post facto, in case the fates rule adversely to his expectations. The following quotation from the pen of the late Ella Wheeler Wilcox appropriately expresses my sentiments occasioned by final reflection upon the incidents that have given me considerable concern in this case:
>
> 'Worth While
>
> 'It is easy enough to be pleasant,
> When life flows by like a song,
> But the man worth while is the man who will smile
> When everything goes dead wrong.
> 'For the test of the heart is trouble,
> And it always comes with the years,
> And the smile that is worth the praises of earth,
> Is the smile that shines through tears.'
>
> "Amicus usque ad aras! What a far-reaching, priceless virtue!"

SONGS FROM THE SOUTH LAND

IN HIS dissenting opinion in McDonald v. Hall-Neely Lumber Co., 165 Miss. 143, 147 So. 315, Justice Griffith retells a classic of the Mississippi Bar:

> "For many years the chief occupations of the people of this state have been in agriculture and in lumbering. It had hardly occurred to any one throughout these long years, and until lately, that the cotton picker who furnished his own sack, and was paid so much per hundred pounds, was anything than an employee, and likewise as to a log hauler who furnished his own truck and was paid so much per thousand feet. In the case Harper v. Wilson, 163 Miss. 199, 140 So. 693, the point was raised that in such a case a cotton picker named Teresa was an independent contractor. In response to that contention, after citing a wealth of authority, the attorneys for appellees made an additional scintillating protest, which we believe we

might here appropriately quote: 'King Solomon with all his wisdom has been discredited for certainly here is something new under the sun. Negro cotton pickers independent contractors! Shades of Uncle Remus, Bre'r Rabbit and the Tar Baby! The songs and laughter, beloved of the poet and author, floating over the domain of the army worm and the empire of the boll weevil are no longer the songs of the tenants and the laughter of the servants, but the melodious voices of independent contractors. So perishes a glamorous and beautiful tradition; and so passes incomparable legends. When, in our youth we sat upon the knees of Uncle Remus and Old Reliable, entranced by their folk lore tales, we were listening to independent contractors. So fades this world's illusions!

"The song of the old black mammy: 'I got wings, You got wings, All God's chilluns got wings,' has passed into oblivion for the voice of Teresa rises with a new libretto to an ancient score: 'I got a sack, You got a sack, All in'pendent contractors got sacks.'"

"So it is here, all independent contractors got trucks. The case Hinton v. Pearson is in my opinion in perfect point, and since the court has not voted to overrule it, I deem myself bound by it, and therefore dissent from the opinion of the majority in the instant case."

EXHIBITS FROM ALASKA

Contributed by Lynn J. Gemmill, Juneau, Alaska.

EXHIBIT A was written to our office by an elderly Alaskan Native residing at the historic town of Sitka. He had been notified by the U. S. Customs office that he was subject to a fine for violation of Regulations in that he failed to carry the boat's license number on the bow of his fishing boat, but instead had placed it on the cabin of the boat. The usual procedure of the Customs office is to forthwith assess a fine for the apparent violation. If a proper explanation is made or if there are mitigating circumstances accompanying the violation the fine may be remitted. The Customs office not having heard from the Native the matter was submitted to our office for action. This letter was in answer to my letter demanding either prompt payment of the fine assessed or full explanation for consideration.

Exhibit B was a voluntary statement submitted by a Filipino residing at Petersburg, Alaska after being charged with Assault with a Dangerous Weapon under the Territorial law. At the preliminary hearing, held before the U. S. Commissioner on a felony charge the defendant is notified, as provided by Territorial statute, that he may make a statement if he so desires in way of explanation. It is not very often that these statements are taken down exactly as quoted, but the Commissioner did so in this case. I think that it is very typical of Filipino explanations which usually are pregnant with admissions of guilt.

Exhibit C is a copy of a letter written by a Filipino which was addressed to the U. S. Customs office and which was referred to our office. I believe that the letter is self explanatory. Being an alien he desires to know if it is possible for him to build a boat using an engine which he has now in possession to propel the same. It is the first time that I have heard the expression, "your Black & White Legal supervision."

EXHIBIT A

Dear Attorney.

Will tell you all about when first coast guard told about the number on the cabin he told me to put it at bow so I put it right where he told me to put it. I went about a mile then I stop the boat and put the number where he told me to put it and I ask him just where I was suposed to put it. When I was sick the fire extinguisher roll in the water and make the number com off and I did know it. And when I came to town I bought a new one and put it where he told me. And when I put number and fire extinguisher on I didn't report of it I thought custom office checked up on it. But I am very sorry to tell you that I done work any more because I am at the age 66 now so I have no money if I borke (broke) the law

bye not report it to the office if I had money to pay for it but I am sorry to say I have the money. if I try to borrow the money they wont believe me because I dont worke. I have four children that don't worke so they can't help me out. but my only son is the one that is suported us with food clothing for the kids.

But now that he is to join Army I won't have no body to suported the children and my self. so I am asking the custom office and Attorney to just excuse me for violating the law. This is all I can say to you.

Yours truly.

EXHIBIT B

I was here near a year. Occupation—Fisherman.

Statement.

When this happen February 22, 1941, it was midnight five minutes to twelve and I was my room, I was playing my radio. Afterward somebody knocked the door and then I opened the door. It was Andrew Moran. I said, "Sit down" and he said, "No" and I said, "Anything else I can do for you? He said, "I come in here to talk to you about Joe Romero accuse me that he said I give you a gun." He said, "Come with me in the Pool Hall and see him, also talk to him about this matter." I said, "Alright." I put my shirt on I go with him in the Pool Hall. When I get there I am looking for Joe Romero, because I want to talk to him. At the meantime he is not there and afterward he come down from upstairs. When he see me in the Pool Hall he said, "You want trouble." I said "No, but come here, I want talk to you" and then he don't come and I going towards for him. And then I hold him his shirt right shoulder side. I pushed him to sit down with me because I want to give him explanation and he said "No." And then I said "Come on sit down with me, I like you a nice gentlemen." And then he don't listen to me and he said "Who are you?" I said "I am common people like you just the same." He don't listen to me. Alright then I let him go. Afterwards he said "Wait for me" "You wait for me." "I go upstairs, I'm going to get some kind of a weapon." And then I go out from the Pool Hall.

I go right straight in my room and I take the knife. I put the knife my shirt in front in my chest and then I never go again to the Pool Hall, I go out in alley between Sing Lee Hotel and Poodle Dog Cafe, and then I go to Larry's Cafe. I go upstairs. Julia Rafal, she was there and I say "Joe Romero he want make trouble with me." And then Julia Rafal she said to me "Go downstairs if you see Joe to Pool Hall, tell him come up here I want talk to him." Afterwards I come down. When I pass the Pool Hall, just as I look through the door I don't see him. And then I am going towards to my room. At the same time when I close to the steps I see him go upstairs about three or four steps from the walk and he said, "Hay Jay come upstairs I want talk to you." I said "No come down here I want talk to you so will be settled down this matter also Julia Rafal she wants to see you." I said "Come on this way" and he said "No." I said "What is the matter." He answer "I don't like to fight with you." He said "I don't want no trouble." I said "I don't want to fight with you also I don't want no trouble between you and I." I drug him to Larry's Cafe. I said "Come on let us go upstairs because Julia Rafal she want to see you." He said "No" but I still hold him his belt. At the same time Mrs. Larry she come out from the restaurant and she see me with Joe that I hold him his belt. And Mrs. Larry Evans she said "Don't do that." And afterwards I see Mr. Anderson and he said "Hay Hay" I don't pay any attention with him because he's drunk. At the same time I seen him get the knife his own right hand. What he was playing with a quart bottle between his own belt and belly. And then I bring Joe Romeno against the wall. At this same time Mr. Anderson took the knife against the wall between Joe's face and I. At the same time he grabbed my knife in from my shirt outside. At the same time I left him Joe go. Mr. Anderson was drunk, also Joe. Fell down together. Joe was underneath. Mr. Anderson was on top and then I go for home. I saw Joe come to Pool Hall, he took cue and struck me and then when I saw him I ducked my head down. Three Filippinos grabbed him and at the same time I run out.

When I get to my room I locked my keys and they were last and then I looked for them.

That is all.

EXHIBIT C

Dear Sir:

I am a Filipino and was born in the Islands; and a World War—Veterrant; residing in Alaska for over Ten Years; desiring to posses the following Article: This Lauson Engine; Type 1848 41480; No. A22507 is already in my possession, but the body of the same is to be built by me if I shall be permitted to do so under your consideration. Sixe of this Boat is 15 x 6 x 3.

I have been informed that we, the Filipino could not build nor sale Boat (Fishing Boat) being we not a Citizens, yet I would

not take such informations without your Black & White Legal supervision. So please your immediate attention to this matter shall be greatly appreciated. As to whether or not I shall be allowed to have this property, please direct your Local Authority at Petersburg, Alaska so that they can personally guide us to right proceedures by return mail.

Respectfully yours.

RE BAR REGULATIONS

Contributed by Walter B. Batchelor, Oswego, N. Y.

The rules to regulate the bar
Will fail to operate by far.
No platitude of conduct can
Control an avaricious man.
No matter what the outward sign,
You cannot make him toe the line:
For 'neath the surface lurks desire
To gain the favorable hire.

Solicitation of a case
Is said your standing to debase;
But, if a case comes to your hand,
Its proper conduct will demand
That you solicit far and wide
In expedition of your side.
No lawyer, worth a "tinker's damn"
Will lose a case, if win he can.

Believers in the Golden Rule
Seek not the law to try to fool
A neighbor from his rightful due.
They do as they would have you do;
But those, who seek the law's redress,
Have many strange things to confess.
The lawyer, who protects them well,
Will seldom care the truth to tell.

The legal practice of the day
Moves onward in its subtle way.
The viewpoint of the common man
Has placed this practice under ban;
For what to him would seem too rough
The lawyer thinks not tough enough.
The game determines what is wrong.
To each game diff'rent rules belong.

But pass these rules to regulate,
And you will make the lawyer rate
Three times as subtle as before.
To honesty you'll close the door.
Because to get the same result
Without these new rules to insult,
He'll have to wield a slicker hand,
And "cover up" to beat the band.

No prejudicial rule can bend
Resourceful lawyers to its end.
All platitudes of "might makes right"
Do nought but drive the truth from sight.
No well developed business course
Can be disorganized by force
When instinct permeates the game,
For it will always run the same.

Look to the source, and you will find
The reason, that exists behind
This organized paternal scheme
Disguised beneath a pious mien.
The minions of a favored few
Would constitute a censor crew,
Whose sole objective is control
Of litigation's very soul.

Solicitation well may be
Result of methods one or three.
They are direct and indirect,
And intuition's counter-check.
A fourth way is to slyly deal
In psychological appeal.
Which method will the rule prevent?
Will it all four ways circumvent?

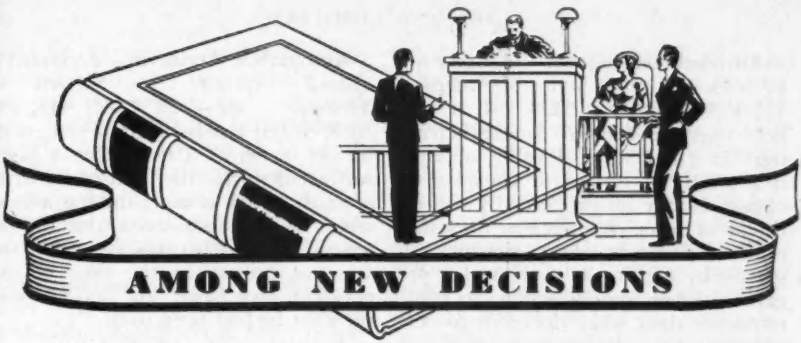
This agitation you can see
Is fostering disparity.
Distinction, seemingly, is had
'Twixt good soliciting and bad.
A certain kind of enterprise,
Immoral in the censor's eyes,
Is by the moral men reviled.
To "chase the ambulance" 'tis styled.

What of the men who advertise
Their legal business to the skies?
What will we do about our friends
Who seek political amends?
Should not a bank job candidate
With trustees quit his tete-a-tete
Just how far can a lawyer go
In "chiselling" for honest "dough"?

Assuming that you had in mind
A corporation job refined,
Just how would you inaugurate
A plan, which would not violate
This rule we're called to consecrate?
Could you without hypocrisy
Proceed to seek prosperity?

Of all prohibitory law
This is the worst we ever saw.
Instead of causing a surcease
Of this soliciting disease,
'Twill open up a wider door
Before the brave ambassador.
The greedy lawyer without fear
Will seize all business far and near.

Of this debauch, a bird's-eye-view
Brings back to mind the maxim true:—
"Oh, what a tangled web we weave,
When first we practice to deceive."
Solicitation still will stand
The lawyer's foothold in the land.
In fact another title for
A lawyer is "Solicitor."



Accident Insurance — *burning as accident.* In Pyramid Co. v. Milner, — Ky —, 158 SW (2d) 429, 138 ALR 1507, it was held that the evidence is sufficient to sustain a finding that the death of an insured resulted from "accidental means" within the meaning of an insurance policy, where it is shown, inter alia, that the insured, who died from nephritis after sustaining severe burns, received the burns while dressing or shaving in the kitchen, apparently as a result of the ignition of some inflammable substance coming in contact with the stove, and the testimony, although conflicting and inconclusive, establishes that the injuries were not intentionally self-inflicted or the contemplated result of any act committed by the insured, and fails to show, as contended by the insurer, that the burns were the result of some inflammable substance thrown upon the insured by his wife in play.

Annotation: Burn as an accident or caused by accidental means within coverage of life or accident insurance policy. 138 ALR 1514.

Adoption — *withdrawal with consent to.* In Re White's Adoption, 300 Mich 378, 1 NW (2d) 579, 138 ALR 1034, it was held that a mother consenting to the adoption of a child may withdraw such consent, without the necessity of showing fraud or duress, at any time within the period allowed by statute for the filing of a petition for a rehearing in the adoption proceedings, at least where no vested rights have intervened.

Annotation: Right of natural parent, or other person whose consent is necessary to adoption of child, to withdraw consent previously given. 138 ALR 1038.

Airport — *municipal liability.* In Abbott v. City of Des Moines, 230 Iowa 494, 298 NW 649, 138 ALR 120, it was held that the operation of an airport by a municipality, including a tower and beacon light used to light up the landing field, constitute a governmental, rather than a proprietary, function, so as to relieve the municipality from liability for injury to an aeroplane through the negligence of a municipal employee in making repairs on the tower, where, although considerable revenue is received from the operation of the airport and from various commercial activities connected therewith, this amounts to only about 57 per cent of the expense of operation, especially where a statute expressly provides that municipal liability in connection with airports shall be no greater than that imposed on them in the operation of public parks, and, under the law of the state, the operation of a public park is held to be a purely governmental function.

Annotation: Liability of municipality for torts in connection with airport. 138 ALR 126.

Anti-racketeering Act – *validity of.* In Nick v. United States of America, 122 F (2d) 660, 138 ALR 791, it was held that the Federal Anti-racketeering Act (18 USC §§ 420a–e), making it a felony to obtain or conspire to obtain money or property by use or threat of force or coercion, does not unconstitutionally deny freedom of speech by making it a crime for organized labor and its leaders to communicate their wage demands to employers, where "the payment of wages by a bona fide employer to a bona fide employee" is excepted from the act, even though, as construed by the court, this exception does not extend to the payment of graft to a labor leader for his own individual enrichment.

Annotation: Constitutionality, construction, and application of Federal act relating to extortion in connection with trade or commerce (Anti-racketeering Act). 138 ALR 811.

Appeal and Error – *intimation by juror as to insurance.* In Thomason v. Trentham, – Tenn –, 154 SW (2d) 792, 138 ALR 461, it was held that during deliberation of the jury in actions for personal injury and for death, arising out of an automobile accident, one of the jurors intimated that all persons involved, being government employees, were probably covered by insurance is not sufficient ground for reversal of the trial court's denial of motion for a new trial after verdicts for plaintiffs, amply supported by the proof although the proof is conflicting, it appearing that the jurors when such intimation was made agreed that they could not consider such matters.

Annotation: Statements or intimation by member of jury that defendant is covered by insurance or for other reason would not bear the real burden of an adverse verdict. 138 ALR 464.

Automobile Accident – *declaration against interest.* In Salvitti v. Thropp, – Pa –, 23 A (2d) 445, 138 ALR 842, it was held that a statement by the owner of a truck that a highway accident was the fault of the driver of the truck is none the less admissible in evidence as a declaration against interest because the declarant was not present at the time of the accident and based his remark only on what he had been told.

Annotation: Admissibility and weight of defendant's admissions regarding accident occurring in his absence from the scene. 138 ALR 845.

Automobile Insurance – *"while" driving or riding.* In Provident Life & Accident Insurance Co. v. Nitsch, 123 F (2d) 600, 138 ALR 399, it was held that an automobile accident policy covering death sustained by accidental means by insured, "while driving, riding in or on an automobile" insures against all accidental injury occurring during the period covered, and is not confined to risks arising out of and incident to operation of automobile, "while" being a word of time and not of causation.

Annotation: Scope and application of provisions of accident policy, or accident feature of life policy, relating to accident in connection with automobile or other motor vehicle. 138 ALR 404.

Automobiles – *bicyclist holding on to.* In Baines v. Collins, – Mass –, 38 NE (2d) 626, 138 ALR 1123, it was held that whether injury to a boy riding a bicycle while holding to the side of a motor truck was caused by the wilful, wanton, and reckless conduct of the operator of the truck so as to permit recovery, notwithstanding the boy was but a licensee, is a question for the jury upon evidence tending to show that the operator, knowing that the boy was holding on to the truck, which was traveling at a

speed of 35 miles per hour, while crossing a causeway intentionally and unnecessarily veered and "snapped back" the truck, the boy being thrown over the handle bars some 12 or 15 feet forward over the road shoulder.

Annotation: Liability for injury to bicyclist while holding on to moving motor vehicle. 138 ALR 1127.

Automobiles — *falling asleep at wheel.* In Jones v. Pasco, — Va —, 18 SE (2d) 258, 138 ALR 1385, it was held that evidence that one went to sleep while driving an automobile, in the absence of circumstances tending to excuse or justify such conduct, makes a prima facie case of want of proper care.

Annotation: Physical defect, illness, or drowsiness of operator of automobile as affecting liability for injury. 138 ALR 1388.

Automobiles — *guests — assumption of risk.* In Mitchell v. Heaton, — Iowa —, 1 NW (2d) 284, 138 ALR 832, it was held that the question as to assumption of risk by one riding in an automobile, a rear wheel of which, he knew, was fastened with only four nuts one of which was loose, instead of six nuts, is for the jury upon evidence that he knew nothing about the make of the car, but called defendant's attention to the condition, and observed that he did not like it and was assured that it would be perfectly safe and that he (defendant) would drive carefully and slowly.

Annotation: Assumption of risk or contributory negligence in riding in defective automobile. 138 ALR 838.

Automobiles — *reciprocity statute.* In Reeves v. Deisenroth, 288 Ky 724, 157 SW (2d) 331, 138 ALR 1493, it was held that a motor vehicle reciprocity statute providing that a nonresident owner of a motor vehicle complying with the laws of his state relating to the registration of such vehicle shall, if such state does not require the registration of nonresident owners temporarily therein, be exempt from registration within the state for the same period of time as is granted to nonresident owners of his state, *held,* in the light of its legislative history, of the fact that other statutes regulating motor carriers make no reference to nonresident owners, and of the fact that such other statutes were adopted after the reenactment of the reciprocity statute, to be applicable to commercial vehicles, but, in view of the phrase "temporarily therein," not applicable where such commercial vehicle is operated regularly or continuously or more than just occasionally within the state.

Annotation: Constitutionality, construction, and effect of statutes in relation to foreign-owned vehicles operating within state. 138 ALR 1499.

Automobiles — *service on nonresident motorist.* In Southeastern Greyhound Lines v. Myers, 288 Ky 337, 156 SW (2d) 161, 138 ALR 1461, it was held that a statute permitting constructive service upon a nonresident owner or operator of an automobile in an action arising out of or by reason of an automobile accident within the state is applicable in an action by one of two persons whose alleged concurrent negligence caused such an accident, against the other to recover one half the amount paid by the former to satisfy a judgment recovered against him by the injured person.

Annotation: Construction and application of statute providing for constructive or substituted service of process on nonresident motorists. 138 ALR 1464.

Banks — *negligence in paying.* In Mayo Bros. Chemical Corp. v. Capital National Bank, — Miss —, 5 So (2d) 220, 138 ALR 849, it was held

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that a bank which at the request of the sales manager of a corporate depositor paid to him in cash a check, drawn upon and payable to the order of the bank, and signed by the president of the corporation and by the sales manager, who misappropriated the proceeds, is not chargeable with negligence, where it had no notice of the alleged purpose of the corporation to use the check for the purchase of New York exchange, and the sales manager had previously made withdrawals from the account by checks payable to him signed by the president and himself as required by a corporate resolution of which the bank had notice.

Annotation: Duty and liability of bank in respect of a depositor's check drawn upon and payable to the bank. 138 ALR 853.

Carriers — *sudden stop injuring passenger.* In Teche Lines v. Pittman, — Miss —, 4 So (2d) 293, 138 ALR 220, it was held that it is the duty of one operating a passenger bus on a pavement only 20 feet wide at a speed of 35 miles per hour, upon seeing a hog in the road only 75 feet ahead, to apply the emergency brakes, and any injury to a passenger resulting therefrom is not actionable.

Annotation: Liability of motor carrier for injury to passenger by sudden stopping, starting, or lurching of conveyance. 138 ALR 224.

Corporations — *restrictions on stock transfers.* In Elson v. Schmidt, — Neb —, 1 NW (2d) 314, 138 ALR 641, it was held that where the constitution of a corporation contain an article with the following provision: "Shares (of stock) are transferable on the books of the company upon presentation of the certificate properly indorsed, provided all indebtedness of the owner to this company has been paid, and provided further, that one of the four companies is the purchaser or each have had opportunity to purchase at par or less," and the stock is sold to one of the four companies, as provided in such article, *held,* that such provision amounts to a valid contract between the parties thereto, is a reasonable restriction and is binding on such corporations and the respective stockholders thereof.

Annotation: Validity of restrictions on alienation or transfer of corporate stock. 138 ALR 647.

Damages — *burden of sustaining liquidated damage clause.* In Rice v. Schmid, 18 Cal (2d) (Adv p. 364), 115 P (2d) 498, 138 ALR 589, it was held that a seller of goods seeking the enforcement of a liquidated damage clause in a contract has the burden of establishing that at the time the contract was entered into the nature of the agreement was such that, in the language of the code provisions in that regard, "it would be impracticable or extremely difficult for a court to fix the actual damage" in the event of a breach.

Annotation: Provision for liquidated damages in contract for sale of goods. 138 ALR 594.

Death Action — *benefit of nonresident aliens.* In Burgess v. Gilchrist, — W Va —, 17 SE (2d) 804, 138 ALR 676, it was held that the right of action by a personal representative of a resident alien, whose death is alleged to have been the result of the wrongful act, negligence, or default of another, is not barred by the fact that the only distributees of such decedent are nonresident aliens.

Annotation: Right to maintain action for wrongful death for benefit of nonresident aliens. 138 ALR 684.

Divorce Action — *dismissal or nonsuit in.* In Chamberlain v. Chamberlain, — Colo —, 120 P (2d) 641, 138 ALR 1097, it was held that refusal

of an order dismissing suit for divorce, upon the plaintiff, husband, filing formal dismissal, was error, the defendant, wife, who objected to dismissal, having interposed no cross complaint nor denied the charges of infidelity made against her, notwithstanding that a child of the marriage, who had previously been with the father, had been awarded to her custody for three months by an order which had been stayed pending an application for supersedeas.

Annotation: Right of plaintiff, or of defendant who has filed counterclaim or cross complaint, in action for divorce, separation, or annulment, to a voluntary dismissal or nonsuit. 138 ALR 1100.

Divorce — *separation decree as res judicata.* In Cochrane v. Cochrane, 303 Mass 467, 22 NE (2d) 6, 138 ALR 341, it was held that a decree in favor of a wife in a suit for separate maintenance in which there was no finding as to what the justifiable cause was on which the decree was founded, or as to the time when such cause came into existence, is not res judicata that the wife is not guilty of the acts of cruelty alleged in her husband's subsequent libel for divorce to have taken place at a time before the entry of such decree.

Annotation: Decree in suit for separation as res judicata in subsequent suit for divorce or annulment. 138 ALR 346.

Equitable Conversion — *partnership redemption on foreclosure.* In National Bank of Topeka v. Saia, 154 Kan 739, 121 P (2d) 251, 138 ALR 1290, it was held that the record in an action to foreclose a mortgage on partnership real estate and to have the real estate converted into personalty for the purpose of sale, in order to deprive defendant owners of their right to redeem, examined, and held, necessity and justice, under the facts and circumstances narrated in the opinion, did not require a court of equity to invoke the doctrine of equitable conversion for the purpose plaintiff sought to have it invoked.

Annotation: Doctrine of equitable conversion as affecting right of redemption from execution or judicial sale. 138 ALR 1296.

Fraudulent Conveyances — *excessive security.* In Re Rasmussen's Estate, — Wis —, 298 NW 172, 138 ALR 1045, it was held that chattel mortgages covering all of the mortgagor's personal property, given at a time when his real property was mortgaged to secure indebtedness greatly in excess of its value, are fraudulent, without regard to the mortgagor's actual intent, under a statute which provides that every conveyance made without fair consideration when the person making it is engaged or is about to engage in a business or transaction for which the property remaining in his hands after the conveyance is an unreasonably small capital is fraudulent as to creditors and as to other persons who become creditors during the continuance of such business or transaction, without regard to his actual fraudulent intent.

Annotation: Excessive security for debt as affecting question of fraud upon creditors. 138 ALR 1051.

Gas Company — *duty in turning on meter.* In Scarborough v. Central Arizona Light & Power Co. — Ariz —, 117 P (2d) 487, 138 ALR 866, it was held that a gas company which knows that the meter in which it turns on gas may permit gas to escape into other premises than those into which it has been directed to turn it, and does not use reasonable care to ascertain whether the fixtures in the other premises are in proper shape, is negligent so far as the occupants of the other premises are concerned, but not in regard to the occupants of the prem-

ises where it was directed to turn on the gas.

Annotation: Gas company's liability for injury or damage by escaping gas. 138 ALR 870.

Golf Course — *negligence on.* In Walsh v. Machlin, 128 Conn 412, 23 A (2d) 156, 138 ALR 538, it was held that a golfer who was an experienced player and familiar with the rules was not chargeable with negligence, where, either because of the wet and heavy condition of the grass in the rough from which the play was made, or his miscalculation as to the height of the ball, he hit it with the shaft of his mashie niblick, as the result of which it took a 90-degree slice, and struck a playing partner, also an experienced player, who was about 35 or 40 feet away on a line at right angles to the intended and anticipated line of flight.

Annotation: Liability for death or injury on or near golf course. 138 ALR 541.

Insurance — *agreement with beneficiary as to proceeds.* In Mutual Benefit Life Insurance Co. v. Ellis, 125 F (2d) 127, 138 ALR 1478, it was held that an interest income-bearing certificate, issued by an insurer to a beneficiary upon the insured's death in accordance with a request by the beneficiary that the proceeds of the policy should remain with the insurer, the income therefrom to be paid to her for her life, and after her death the principal to go to the three sisters of the insured, subject to the right of the beneficiar to withdraw the principal at any time, is not a supplementary insurance contract, since, although the beneficiary had the right under the option provisions of the policy to leave the proceeds with the company at interest, the certificate was not an election of one of such options, but rather a new agreement, it, not the policy or the exercise of the options, constituting the source of the rights of the insured's sisters.

Annotation: Validity and enforceability of agreement, between insurer and beneficiary of insurance electing to leave proceeds in insurer's hands, as to ultimate disposition of proceeds. 138 ALR 1483.

Insurance — *reformation of valuation clause.* In Orient Insurance Co. v. Dunlap, — Ga —, 17 SE (2d) 703, 138 ALR 916, it was held that while in a proper case equity may reform a written contract which, because of mutual mistake, does not express what the parties intended, it can do so only to the extent of making it speak the actual agreement, and cannot make a new and different contract for them. According to the petition, the agreement as actually made and intended was one for marine and war risk insurance covering transportation from Germany to this country of what was believed to be a genuine pearl necklace of the value of $60,000; and there was no agreement or intention as to insurance of a necklace of different and inferior quality, such as a necklace made of Japanese or cultured pearls and worth only about $60. In the circumstances, the policy could not properly be so reformed as to insure a necklace of the latter character instead of a necklace of genuine pearls. The petition did not state a cause of action for reformation.

Annotation: Rights and remedies as to premium where insured was under mistaken belief regarding value, nature, or existence of property subject of insurance. 138 ALR 924.

Insurance — *sane or insane clause.* In Muzenich v. Grand etc. Catholic Union, 154 Kan 537, 119 P (2d) 504, 138 ALR 818, it was held that in an action to recover on a beneficiary certificate in a fraternal order where a clause provided there should be no recovery if the insured died by suicide,

sane or insane, the record is examined, and it is *held* that the question of whether or not the deceased did die by committing suicide was a proper one to be submitted to the jury under all the circumstances and that the burden of proving that deceased did die by suicide was upon the defendant society.

Annotation: Insanity as affecting the applicability of "suicide" clause, with the words "sane or insane," in life insurance contract. 138 ALR 827.

Joint Adventures — *oil royalty pool.* In Hathaway v. Porter Royalty Pool, 296 Mich 90, 733, 295 NW 571, 299 NW 451, 138 ALR 955, it was held that a joint adventure exists where promoters and landowners enter into an agreement for the creation of an oil royalty pool by which each owner is to turn over to the pool any oil found on his land, and all the owners and the promoters of the pool are to share, according to certain proportions, in royalties from oil found on the lands of others, the expenses of management to be paid out of the proceeds of the oil before any distribution of royalties is made.

Annotation: What amounts to joint adventure. 138 ALR 968.

Libel and Slander — *publication of termination of employment.* In Gartman v. Hedgpeth, — Tex —, 157 SW (2d) 139, 138 ALR 666, it was held that a published notice that a former employee's connection with his employer's business has ceased and that all moneys due for merchandise should thereafter be paid to persons named is not susceptible of construction by an ordinary reader as reflecting upon the former employee's honesty and so cannot be made by innuendo the basis of a libel action.

Annotation: Libel and slander: publication of notice of cessation of relationship of principal and agent or employer and employee, or of business or professional relationship. 138 ALR 671.

Life Tenants — *protection of remaindermen.* In Buckman's Trustee v. Ohio Valley Trust Co. 288 Ky 114, 155 SW (2d) 749, 138 ALR 436, it was held that where life tenant is given the possession and use of the property, it is not generally incumbent upon the executor to require a bond of him; the remainderman or someone representing him may require the execution of the bond, if the life tenant shows a disposition to waste or destroy the property.

Annotation: Requiring security from life tenant for protection of remaindermen. 138 ALR 440.

Municipal Corporations — *excessive penalties.* In Kist v. Butts, — ND —, 1 NW (2d) 612, 138 ALR 1206, it was held that the penalty clause of a city ordinance is not wholly void because it authorizes a penalty in excess of that permitted by state statute, and a judgment and sentence pronounced under such an ordinance may be enforced to the extent that it is within the statutory limitation.

Annotation: Effect of unreasonableness, or variance from constitutional, charter, or statutory provision, of penalty prescribed by ordinance. 138 ALR 1208.

Principal and Surety — *subrogation.* In American Surety Co. v. Bethlehem National Bank, — US —, 86 L ed (Adv 231), 62 S Ct 226, 138 ALR 509, it was held that a surety on a bond given as security for a deposit of state funds in a national bank which afterward became insolvent is entitled, upon payment by it of that part of the deposit remaining unpaid after the declaration of a dividend by the receiver, to participate in subsequent dividend payments upon the basis of the total amount of the deposit, not merely the amount actually paid by it, under the

provision of the National Bank Act (12 USC § 194) for the "ratable" distribution of the assets of insolvent national banks.

Annotation: Basis upon which surety paying part of creditor's claim may participate in dividends from insolvent estate of principal, where other part of claim is paid by proceeds of collateral security or by prior dividends. 138 ALR 517.

Privacy — *unauthorized telegram.* In Hinish v. Meier & Frank Co. — Or —, 113 P (2d) 438, 138 ALR 1, it was held that there is an actionable invasion of the right of privacy where a mercantile company maintaining an optical department unauthorizedly signs another's name to a telegram sent to the governor of the state urging him to veto a bill which, if enacted into law, would prevent the company from continuing to engage in the optical business.

Annotation: Right of privacy. 138 ALR 22.

Public Office — *removal from.* In Eagleton v. Murphy, — Mo —, 156 SW (2d) 683, 138 ALR 749, it was held that misconduct of a member of a board of education during a prior term by violating a statute which specifically provides that any member who is or becomes interested in a contract with the board shall be disqualified to continue as a member and continue to be so disqualified during the remainder of the term for which he was elected is not ground for his removal during a succeeding term, notwithstanding that such violation constituted gross misconduct, within another general statutory provision conferring power upon the circuit court to remove a member of the board for gross misconduct or disqualification for office, since the latter provision must be construed in connection with the former, which limits the disqualification to the balance of the term during which the offense was committed.

Annotation: Removal of public officer for misconduct during previous term. 138 ALR 753.

Res Ipsa Loquitur — *fall of terra cotta from wall.* In Kelly v. Laclede Real Estate & Investment Co. — Mo —, 155 SW (2d) 90, 138 ALR 1065, it was held that res ipsa loquitur applies against lessor where one on the sidewalk was injured by the fall of terra cotta from the wall of a building, it appearing that part of the break was fresh and a part old and stained by the weather, that the part that fell had extended out from the face of the wall over the sidewalk and broke off and fell for no apparent or known cause, notwithstanding that the building had for five years been in the exclusive possession and control of the lessee, which by the terms of the lease was under obligation to keep the premises in good repair; and from those facts the jury may infer that the condition causing the injury was a permanent one existing at the time of the execution of the lease was attributable to unsuitability of materials or lessor's negligent maintenance.

Annotation: Liability for injury to person in street by fall of part of structure of completed building. 138 ALR 1078.

Sheriffs — *care of property levied on.* In State v. Clark, — Del —, 20 A (2d) 127, 138 ALR 704, it was held that the duty of a sheriff to exercise reasonable care in guarding property levied on by him which is too heavy to be readily moved is not excused by the fact that, under the statutes of the state, a special permit would be required from the state highway department in order to move the property over the public highways of the state, such statutes having been enacted in the general public interest, not for the protection of sheriffs.

Annotation: Duty of sheriff or other officer as to care of property levied upon by him. 138 ALR 710.

Specific Performance — *assignee's right to.* In Lewis v. McCreedy, 378 Ill 264, 38 NE (2d) 170, 138 ALR 198, it was held that as a general rule the assignee of a purchaser's interest in an executory contract for the sale of real estate may specifically enforce performance by the vendor, where complete performance of the contract by the assignee has been tendered within the time provided in the contract, notwithstanding the objection of lack of mutuality based on the inability of the vendor to have specifically enforced the contract against the assignee.

Annotation: Remedy of specific performance as available to vendee's assignee. 138 ALR 205.

Spendthrift Trust — *validity.* In Medwedeff v. Fisher, — Md —, 17 A (2d) 141, 138 ALR 1313, it was held that in Maryland a spendthrift trust is valid as to both corpus and income even though both are payable to the same beneficiary.

Annotation: Validity of spendthrift trusts. 138 ALR 1319.

Statute of Frauds — *agent's memorandum.* In Dodge v. Blood, 299 Mich 364, 300 NW 121, 138 ALR 322, it was held that a memorandum, signed by a properly authorized agent, which partially discloses, but does not identify, the principal satisfies the requirement of the statute of frauds as regards identification, whether it purports to bind the agent as party to the contract or not.

Annotation: Signing of contract or memorandum by agent of undisclosed principal as satisfying statute of frauds. 138 ALR 330.

Storage Contract — *bailment or lease.* In Zweeres v. Thibault, 112 Vt 264, 23 A (2d) 529, 138 ALR 1131, it was held that the jury may reasonably find that the relation of bailor and bailee, with its attendant liability for injury to the goods stored, rather than that of landlord and tenant, existed between the owner of furniture and one on whose premises it was stored, where the evidence showed that the defendant operated a second-hand furniture store, that plaintiff inquired of defendant if he rented storage, and upon learning that he did, was shown a place in the back of his store where other furniture was stored, whereupon she said she wanted a place where her furniture would be by itself, that he then took her into and showed her a room in an adjacent building, telling her that it was a good, dry place and that he kept rat poison around all the time to make sure that he kept rid of rats, whereupon she rented the room in which to store her furniture, at a monthly rental.

Annotation: Storage contract as a bailment of chattels, or lease of place where chattels are stored. 138 ALR 1137.

Taxation — *property held by charitable organization as trustee.* In Animal Rescue League of Boston v. Bourne's Assessors, — Mass —, 37 NE (2d) 1019, 138 ALR 110, it was held that exemption from taxation granted by statute to real estate owned and occupied by a benevolent or charitable corporation for purposes for which it is incorporated does not extend to real estate held and occupied by such a corporation under a will which devises the property to a trustee with directions for its use for certain purposes some of which are and one of which is not, within the powers of the corporation.

Annotation: Tax exemption in respect of property held subject to an express trust by a charitable, religious, or similar body generally within benefits of exemption. 138 ALR 116.

THE HUMOROUS SIDE

Playing with Fire. Recently in Pennsylvania a new Justice of the Peace took office. Shortly thereafter his constable, who likewise was a new man on the job hauled in a young culprit before the bar of justice. The Borough had for some time past been bothered and troubled by some firebug who was burning privies and miscellaneous outbuildings. "What's the charge, Bailiff," says the Squire, assuming his most judicious manner. "Arson," replies the Bailiff. After several minutes of mental gymnastics, the Squire pronounced his sentence as follows: "Young man, there has been altogether too much of this stuff going on around here of late. I'm goin' to make an example of you. The sentence of this court is that you pay the costs of six dollars and twenty-five cents and support the child until it becomes 18 years of age!" Contributor: Gauin H. McCoy, Port Allegany, Pa.

Respectful. Charles M. Schwab once instructed his secretary to buy him two tickets for "Charley's Aunt," that hardy perennial. Calling an office boy, the secretary said:

"Go down to the theatre and get two tickets for 'Charley's Aunt.'"

The lad pocketed the money and made as if to leave. But, after taking a few steps, a puzzled look came into his face, and turning to the secretary he asked respectfully:

"Don't you think I'd better say Mr. Schwab's aunt, sir?" —*Cosgrove's.*

Slow Motion. Abraham Lincoln once wished to attend a political meeting in a town some distance away. Being in need of a horse, he approached a liveryman to obtain one. The latter gentleman, who belonged to the rival political party, provided Mr. Lincoln with a very slow horse, hoping that he would not reach his destination in time. The future President did manage to make it however. When he returned he remarked to the animal's owner: "You keep this horse for funerals, don't you?"

"Oh, no," was the reply.

"Well, I'm glad of that," said Lincoln, "for if you did you'd never get a corpse to the grave in time for the resurrection."

—E. E. Edgar.

Y-A-L-E. At a Banquest we were fortunate enough not to attend a Yale graduate was called upon to make an impromptu speech.

Equal to the situation, he bethought himself of his Alma Mater and lauded her most heartily.

"Y," he said, stood for Youth and all the benefits it enjoyed at college. He elaborated on this theme for half an hour.

"A," he added, was for the Appreciation of the finer things of life which the worthy college makes possible. On this he dwelled for some thirty minutes.

"L," he went on, was for Loyalty, the stem of all endeavor. And such a worthy thought required another half hour for expression.

"E," he concluded, was for the Efficiency of a college graduate, and this idea needed the better part of an hour for telling.

When he sat down there was a rustle among the fellow diners, but it was not loud enough to drown the murmur of a drowsy-looking man near the end of the table who observed:

"Thank God he didn't go to the Massachusetts Institute of Technology."

—*Postage Stamp.*

The Change. Arabella—A drunken man proposed to me last night.

Agatha—Ho, ho, pardon me, but it's so funny—a man proposing to an old maid like you.

Arabella—Just a minute, Agatha. I'll have you understand I'm no longer an old maid.

—*Exchange.*

Evil to Him Who Evil Thinks

By Roman Glocheski

He grabbed me by my slender neck;
I could not yell or scream.
He took me to his dingy room
Where he could not be seen.

He tore away my flimsy wrap
And gazed upon my form;
I was so very cold and damp
While he was very warm.

His frenzied lips he pressed on mine—
I gave him every drop;
He drained me of my very self—
I could not make him stop.

He made me what I am today,
That's why you find me here,
A broken bottle thrown away
That once was filled with beer.

—*Cosgrove's.*

Add Daffynitions. We have too long neglected work on our *Revised Dictionary*, which we are writing because Webster makes such poor reading matter.

Our chapters three and four make even poorer reading than Webster, so we will skip them and give you chapter five, which follows:

Archives—Place where Noah kept his bees.

Bore—A man who talks about himself when you want to talk about yourself.

Buttress—A female goat.

Cannibal—One who loves his fellowmen.

College Education—Something which never hurts anybody who is willing to learn something afterwards.

Consult—To seek another's approval of a course already decided upon.

Flirt—A hit-and-run lover.

—*The Postage Stamp.*

Dire Punishment. Nat borrowed thirty-five dollars from his friend Amos and gave a note for the amount. The note became due and Amos called on Nat and demanded, "When you-all gwine pay that note?" "Ah ain't got no money now but Ah gwine pay just as soon as Ah kin." "Dat don't get me nothing, nigger," retorted Amos. "If you all don't pay me here and now, Ah gwine burn up your old note, den where-all you gwine be at?" "You better not!" shouted Nat. "You just burn that note of mine and Ah'll burn you up wid a lawsuit!"

—*American Legion Monthly.*

He Resigned. Last week we heard about the old Negro who was taking a civil service examination for the job of mail carrier. One of the questions was: "How far is it from the earth to the sun?"

The old darky looked frightened and exclaimed: "If you all is gwinter put me on that route, Ize resignin' befo' I begins."

—*Cosgrove's.*

Calling Names. The little Irishman was being examined for admission to the army. He seemed all right in every way except one. The doctor said, "You're a little stiff." Quickly the Irish blood mounted as the applicant replied, "You're a big stiff!" —*Threads.*

Forward Looking. A prominent Southerner, when quite old, married a young and very beautiful girl. The following clause is contained in his will:

"I will and bequeath the balance of my real estate to my wife for and during her widowhood and during her natural life, with the stocks of horses, cattle, hogs and sheep, farming implements, carriage and household matters. If, however, she should cease to be my widow or marry again, she must account for all these things and take her dower at law. It is not my purpose to give to any cur a sop." Contributor: Levi H. David.
Washington, D. C.

Credits Too. A fraternity had sent its curtains to be laundered. It was the second day that the house had stood unveiled. One morning the following note arrived from the sorority across the street: "Dear Sir: May we suggest that you procure curtains for windows. We do not care for a course in anatomy." The chap who left his shaving to read the note answered: "Dear Girls: The course is optional." —*Threads.*

Accommodating. An old Chinaman, delivering laundry in a mining camp, glancing back, saw a huge brown bear sniffing at his tracks. "Huh," he exclaimed, "you likee my tracks, I makee plentee more for you!"

—*Exchange.*

His Mistake. Wife: "You were right, Henry, and I was wrong."

Husband: "Forgive me, dear."

—*Threads.*

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Trucking Service. A. L. R. wrote to F. F. H. asking for information and briefs connected with a certain case as he was the counsel for that case. He replied, stating that the case was closed after a rehearing was denied and that the files had all been thrown away. Said he: "I don't keep anything like that when it becomes a closed chapter. The final action has been taken in the case and the opinion is now final. The Attorney for the defense filed enough briefs and of sufficient size to fill a truck. If you are interested in that, you had better take it up with him."

Undoubtedly. "Say, boy," a colored convict inquired of his new cell mate, "when does you all go out?"

"De fust," was the laconic answer.

"Sho' nuff?" was the reply. "De fust of what?"

"De fust chance Ah gets." —*Exchange.*

Delegated Duty. Woman: "My husband is so careless of his appearance. It seems that he just can't keep buttons on his clothes."

Neighbor: "Are you sure it's carelessness? Perhaps they are—uh—well, sewed on improperly."

Woman: "Maybe you're right. He is terribly careless with his sewing."

—*Cosgrove's.*

What! No Challenge. The following is an excerpt under "Dueling" in a Digest:

"A letter containing such expressions as, 'It appears that a nife is your faverite of setling fuses, and if so bea the case you can consider that if will sute me you are a Cowerd and darsent to except of the offer. i want the same chanse of sharpening mi nife you can set your day and i will be on hans.' is not a challenge." See Aulger v. People, 34 Illinois 486.

Contributor: McHenry Kemp,
Chicago, Ill.

In a Lighter Vein. The Foreman reported that the jury were unable to agree upon a verdict. The Judge reproved them, saying that the case was a very clear one, and sent them back to the jury room for further deliberation. "And if you do not reach an agreement before evening," the Judge added, "I will have twelve suppers sent in to you."

"May it please your honor," spoke the Foreman, "you had better make it eleven suppers and one bundle of hay."

—*Threads.*

A Good Practice. Admiring Friend: I see that you are now practicing law.

Frank Fledgling: No, sir; I appear to be practicing law, but I am really practicing economy. —*Exchange.*

Evil to Him Who Evil Thinks. The bus driver charged a lady full fare (10c) for her son. He had on long pants.

At the next corner a small boy wearing short trousers, paid only 5c (half fare).

At the next stop, a lady mounted the bus and the conductor didn't charge her anything. Why?—

You have an evil mind—the lady had a transfer. —*Cosgrove's.*

Sweet Briar, No. 408. The news has reached our ears that a questing freshman of one of our up-and-coming colleges addressed the following letter to the unknown (to him) holder at Sweet Briar College of the same box number as his own:

"Dear Box 408:

"I was wondering what the holder of my box number at Sweet Briar looks like. . . . I am tall, dark and I drive a Ford V-8. I am a freshman.

"Tom L———"

By an early mail he received this reply from the sister of Senator Carter Glass:

"Dear Tom L———:

"I am tall, too, and not as thin as I once was. My hair is white and I drive a Buick. I was a freshman in 1896. From the recent pictures of me in the press . . . I think I look like nothing human

"Dr. Meta Glass,
"President, Sweet Briar College."

—*The Postage Stamp.*

Weighing the Testimony. Many years ago, when Walla Walla, Washington, was a small town, yet had a large population of Chinamen, in an action of a prominent butcher to recover on a contract with a Chinaman for one-half of the gross weight of pigs delivered, that the Chinaman was to feed for a period of month, the Justice of the Peace trying the case summed up the evidence, as follows:

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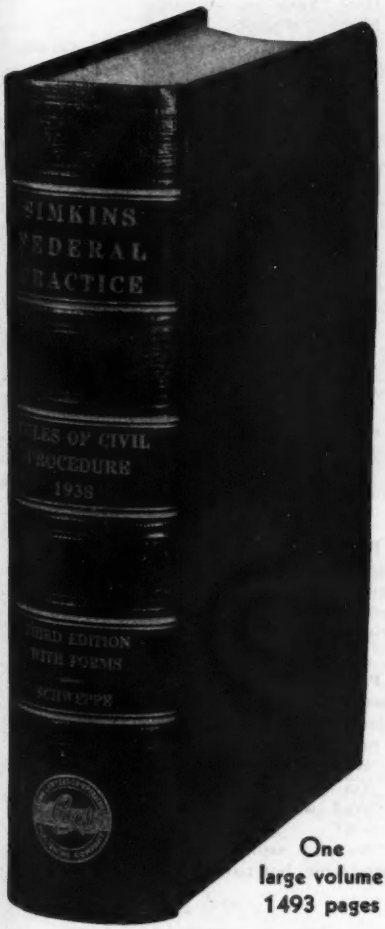

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"One Chinaman testifies that there were thirteen pigs delivered and three whitemen, testifies that there were eighteen delivered, that the Court believes the Chinaman told the truth, that is the verdict of the Court."

Contributor, S. R. King, Attorney,
Walla Walla, Washington.

Pleased to Know Her. The young woman walked boldly up to the elderly woman, whom she had mistaken for the matron of the hospital. "May I see Lieutenant Barker, please?" she asked.

"May I ask who you are?"

"Certainly, I am his sister."

"Well, well! I'm glad to meet you, I'm his mother." —*Threads.*

The Honorary Mr. Grouch. Our druggist declares he likes grouchy people. Said he, "When a man comes in with a grouchy face, I know he wants to buy something. A man who approaches with a broad smile either wants a donation for some cause, or wishes to stock me up with a lot of unsalable goods."

—*Exchange.*

Thoughtful Western Union. Steam automobiles, as a coming thing, are as dead as a dodo. But there are still many enthusiasts scattered around the country who own steam cars and have a lot of fun puttering around with them and exchanging correspondence with other owners about their particular problems.

We have a friend who belongs to, as he calls it, this "clan of nuts." He owns a 1918 Stanley Steamer, and spends many an odd evening trying to keep it in working shape. He also has a friend in Ogden who owns a similar car. The other day he decided to drive out to see this friend—in his Stanley.

While he was en route the old Stanley shuddered and stopped, and no amount of tinkering would put life into it. Our friend, being a thoughtful son, shot a wire to his mother to advise her of his mishap, and to tell her his new plans.

An hour later the Western Union operator in the lad's home town telephoned his home. "Mrs. Brown," said he, "are you alone?"

"Yes," answered Mrs. Brown. "Why?"

"Well," said the operator, "I have a message for you which is not a pleasant one, and I can transmit it only if you feel you can stand the shock. We always try to be solicitous at times like these."

The message was: "Stanley breathed his last this morning. Am returning home by train." —*The Postage Stamp.*

No Admissions. Mike: "Did you ever see a company of women silent?"

Ike: "Yeah."

Mike: "When?"

Ike: "When the chairman asked the oldest lady to speak up." —*Threads.*

Low Rating. Some years ago a lawyer was trying a case in the Accomack County Court, Accomac, Virginia. The judge was not kindly disposed toward the lawyer and fined him for contempt of court for some trivial utterance.

The lawyer held his temper and said nothing about the fine to the judge, but as he was leaving the court a friend stopped him and asked:

"Mr. W———, what do you think of that judge?"

Mr. W——— stopped, thought for a second and replied:

"I know no earthly power, and I do not believe any Divine power, could elevate that judge to the level of a gutter snipe."

Contributor: J. Lawrence Bond,
Philadelphia, Pa.

Brave Man. "The bravest man I ever knew," said the explorer, "was the chap who took a taxi to the bankruptcy court, and then, instead of paying his fare, invited the driver in as a creditor." —*Threads.*

Payment in Coin. "What are you doing these days?" inquired Rastus of Uncle Josh, whom he had not seen for several years. "Ise a preachin'."

"What, you a preachin'!"

"Yes sir, boss, Ise a preachin'."

"Well, well, do you use notes when you preach?"

"No sir," replied Josh, "at first I used notes some, but now I demands the cash!"

—*Exchange.*

Scotch Joke No. 328578. MacTavish complains that his new girl friend is so beautiful that (another canard) when he takes her home in a taxi he can hardly keep his eyes on the meter. —*The Postage Stamp.*

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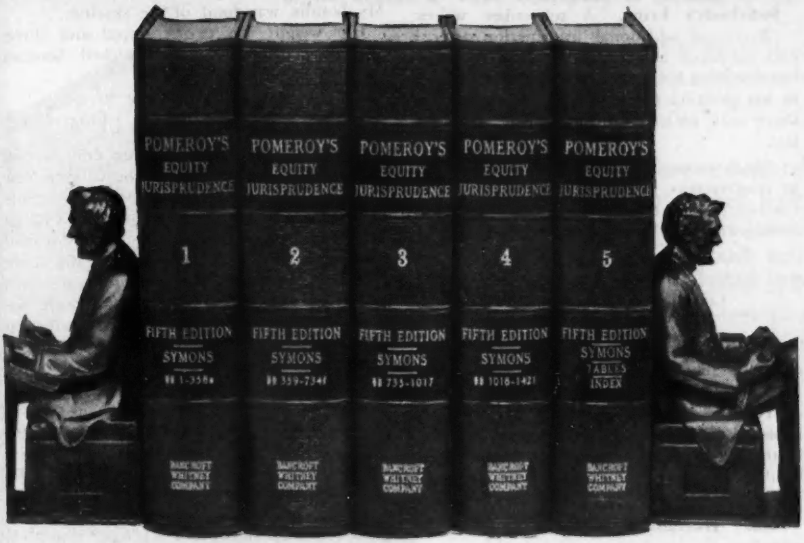

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Bad Case. Friend (visiting hospital patient)—"Do you know, old man, that's a swell looking nurse you've got!"

Patient—"I hadn't noticed."

Friend—"Good Lord! I had no idea you were that sick!" —*Threads.*

Somebody's Error. A subscriber writes: "Receiving additional information after I had prepared a petition for letters of administration, I dictated, 'that by inadvertence in her petition for letters of administration, there was omitted the following heirs at law.'

"Much to my surprise it came back, 'that by inadvertence in her petition for letters of administration, there was omitted the following errors at law.'

"I didn't know that my secretary was as well acquainted with these heirs as I was."

Contributor: Harold S. Thomas.

Spiteful Wife. "I am so glad to see you come so regularly to the evening services, Mrs. Duncan," said the minister.

"Yes," replied the member; "You see my husband always raves about me going out in the evenings, so I come here just to spite him!" —*Exchange.*

Sold. "Hurrah! Five dollars for my latest story."

"Congratulations, young man! From whom did you get the money?"

"From the express company. They lost it." —*Threads.*

Lucky George. Someone has compiled the following list of things the Father of Our Country never saw, or heard, or dreamed:

A fountain pen, a sewing machine; a motor car, a submarine. A street car, railroad, two-cent stamp; a flashlight, an electric lamp.

A football game, a telephone; a furnace, tank, an ice-cream cone. Revolver, match, a Rocky Mountain; a postman, rubbers, drinking fountain.

An elevator, movie show; typewriter, circus, buffalo. A lighthouse, want ad, concrete walks; a bike, a queer machine that talks. An envelope, an airplane—don't think I'm perfectly insane, but of these not a single one was ever seen by Washington.

—*The Better Way.*

An Old Favorite. Here are the "summer" and "winter" versions of an old favorite:

My bonnie looked into the gas tank
The height of its contents to see,
She lit a small match to assist her—
Oh, bring back my bonnie to me!

My bonnie was fond of ice skating,
Her weight was two hundred and three,
She flopped and the ice cracked beneath her—
Oh, bring back my bonnie to me!

—*Cosgrove's.*

Signing Own Warrant. The Old Second District Municipal Court of the City of New York, on Madison St. on the lower East Side of Manhattan, recently abandoned as a Court House, was the scene of many a hilarious and then again many a tragic episode. But there is none which affords the old-timers so much pleasure to relate than the one touching upon the late Mr. Justice Hoya's propensities to doze while on the bench.

It seems that one fine day the calendar of the Second Manhattan was just chock-full of Morpheus-producing litigation, at least so it seemed to the Justice and he dozed off into the "Land of Nod," entirely oblivious to the Commentaries of Blackstone, Kent or even the rule against hearsay evidence.

Some of the old-timers even insist that the Justice snored loudly but all agree that suddenly and spontaneously, some divers attorneys present in the court room entered into an unlawful conspiracy with several court attachés to remedy the Justice's dozing inclinations. Just at the time, court had to be recessed for the day, the conspirators submitted to the court an order providing for a body execution against the person of some individual which the Justice signed while he yawned and wished that he could sleep on without being disturbed.

The old-timers conclude this episode by unanimously agreeing that thereafter Justice Hoya was less inclined to doze on the bench when he discovered that the body execution he had signed actually ordered and provided for his own arrest by a City Marshal.

Contributor: Samuel W. Corwin, New York City.

Bright Sayings. He: "Why didn't you answer my letter?"

She: "I didn't get it, and besides I didn't like some of the things you said in it."

—*Kreolite News.*

Politeness. Billy spent Christmas with his aunt. Checking up on his conduct around New Year's Day, his mother asked him if he had been good during the Christmas season. Billy was enthusiastic with his affirmative answer. "You're sure you did not tell any falsehoods while you were at Aunt Josie's?" said the mother. "None, except that one you told me to tell," replied the child. "When did I tell you you should tell a falsehood?" demanded the surprised mother. "Why, you said when she asked me to have more turkey, I should say, 'No thank you I've had plenty.'"
—*Exchange.*

Guilty. John—"Teacher, can someone be punished for something he didn't do?"

Teacher—"Why, no, of course not."

John—"Well, I haven't done my arithmetic." —*Threads.*

Formula. A patient at the Chicago Memorial hospital, C. L. Boye, relays a story from a Toronto friend: A man recently arrived from England expressed his surprise that so many old ladies remained in London and did not go to shelters during air raids. He finally asked an ancient Scotch woman if she weren't afraid. She answered, "When the sirens start, I get out my Bible and read the Twenty-third psalm. Then I get me a wee drap o' whiskey to steady me nairves. Then I get into bed, pull the covers up close, shut me eyes tight and say, 'To hell with Hitler!'"
—*Cosgrove's.*

Second the Motion. Two polly parrots had been obtained from neighbors to exhibit in the county fair. Their cages hung side by side. One was from the home of an extremely pious retired minister, and the other from a very wicked home.

The latter eyed the former for a few minutes in silence, then yelled: "I wish the old huzzy was dead!" The minister's parrot turned her eyes upward and solemnly said, "May the Lord grant it!" —*Exchange.*

Change of Venue. Here is a new kind of motion for a change of venue. The text of the motion was as follows:

"to Eturney Genearal of the State of Tenn. Dear Sir I would like to Know Wher in A Man that is under the draft age has A Wright to have his registration Card TranSferd to A local draft Board in Joining County if he felt that he couldent Get Justice in the County Wher he lived

Plas ance Soon"

Contributor: Harry Phillips
Assistant Attorney General of Tenn.

The Ashless Kind. "I want a box of cigars, please."

"Yes, madam, a strong cigar?"

"Oh, yes, my husband bites them terribly!" —*Threads.*

Prepared. Father: "Why are you taking that whistle with you tonight?"

Daughter: "I have a date with a football player." —*Threads.*

The Rejoinder. On May 28, 1942, there appeared in a Skowhegan, Maine, paper the following announcement:

"Notice—My wife, Loretta Dionne, having left my bed and board, after this date, the 25th of May, I shall not be responsible for any bills contracted by her.

3w22 ANTHONY DIONNE"

On June 4, 1942 there appeared the following notice in reply:

"Notice—I wish to rectify a notice run in this column last week by Anthony Dionne. I have been paying my own board bills and my children's since Feb. 5th, 1938. As for leaving his bed, it was mine so I took it with me, spring, mattress and squeaks. How could I leave it.

1w23* LORETTA DIONNE."

Contributor: Harvey D. Eaton,
Waterville, Maine.

The Lie Polite.

When he claims that he will love you
For a lifetime and a day,
When he whispers, "I'll adore you
Though your hair has turned to gray."
Try and ask him—softly, meekly—
"What about if I grow fat?"
If he says, "each pound I'll treasure,"
Smile—and let it go at that.
—*Kreolite News.*

Correct Conclusion. Well dressed man, cigar in hand, falling through the air from an airplane:

"Gad! That wasn't the wash room after all." —*Cosgrove's.*

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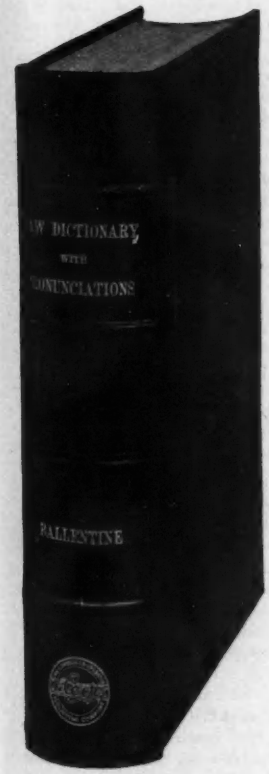

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Not Quite the Same. Mrs. Smith was reading a letter at breakfast. Suddenly she looked up suspiciously at her husband.

"George," she said, "I've just received a letter from mother saying she isn't accepting our invitation to come and stay, as we do not appear to want her. What does she mean by that? I told you to write and say that she was to come at her own convenience. You did write, didn't you?"

"Er—yes," said George. "But I—I couldn't spell 'convenience,' so I made it 'risk.'"

—*Kreolite News.*

Tips from the Fair Sex. Woman has better business sense than man. When her business is to catch a man, she doesn't sit around cussing the President, but spends half her time in beauty parlors and the other half where eligible men are to be found.

—*Cosgrove's.*

Static. The man at the theatre was annoyed by the conversation in the row behind.

"Excuse me," he said, "but we can't hear a word."

"Oh," replied the talkative one; "and is it any business of yours what I'm telling my wife?"—*Portland (Me.) Express.*

Proof of Speed. Rastus was testifying in an accident case and swore that the car which caused the accident was running at least seventy-five miles an hour.

"How do you know the car was going that fast?" asked the defense attorney. "Did you ever drive a car at that speed?"

"No, suh," answered the black boy, "Ah never don drove no car nohow."

"Then how can you judge how fast it was going?"

"Ah ain't no expert, Cap'n Suh," said the darkie, "but Ah knows hit were goin' that fas' an' Ah'll tell you-all how Ah knows hit. When that car passed me Ah thinks to masel' 'Mister you-all ain't agoin' to get very far at that speed afore a accident happens to you.' An' before Ah even got it thunk dar he was kerplunk into that other car."

—*Cosgrove's.*

The Maid Was Tactful. A story comes to us from England about one of the lively young debutantes who was invited to spend a fortnight at a certain country house run on somewhat Victorian lines. Fearing that her pajamas might shock the elderly servants, she took the precaution of putting them away each morning before going down to breakfast.

One morning, however, she suddenly remembered after breakfast that she had omitted to do this. She rushed up to her bedroom, but, to her dismay, the pajamas had disappeared.

"If you're looking for the pajamas, Miss," said the maid, "I've put them back in the young gentleman's room."—*Kreolite News.*

Impasse. Mrs. Williams could only find two aisle seats, one behind the other. Wishing to sit with her sister, she cautiously surveyed the man in the next seat. Finally she leaned over and whispered: "I beg your pardon, sir, but are you alone?"

Without even turning his head in the slightest, but twisting his mouth and shielding it with his hand, he muttered: "Cut it out, sister, cut it out; the wife's with me."

—*The Wall Street Journal.*